IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

New India Assurance Co. Ltd. Vs. Ratan Singh & Ors.

S.B.CIVIL MISC. APPEAL NO.160/2004

Against the award dated 14.10.2003 made by the Motor Accidents Claims Tribunal (Addl.District Judge), Nathdwara in Claim Case No.141/2002.

Date of Judgment : 20.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Jagdish Vyas, for the appellant.
Mr.Ravi Bhansali), for the claimant-respondents.
Mr.Dhanesh Saraswat)

BY THE COURT:

In view of notice for final disposal issued in this appeal on 29.01.2004, learned counsel for the parties have been heard on merits.

The insurer of the vehicle involved in accident, having been accorded permission by the Tribunal to contest the claim on merits, has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 ('the Act') questioning the award dated 14.10.2003 made by the Motor Accidents Claims

Tribunal (Addl.District Judge), Nathdwara on its quantification of compensation in the sum of Rs.3,50,000/- for accidental death of the son of the claimants.

According to the claimants, the deceased Bhoor Singh, 25 years of age, while driving a jeep near Nathdwara on National Highway No.8 at about 12.00 mid-night on 15.11.2000 sustained fatal injuries on being hit by a truck bearing registration No.HT 38D 5326. The claimants Ratan Singh son of Devi Singh and Ramu Kanwar wife of Ratan Singh stating their age at 55 years and 45 years respectively made a claim for compensation against the driver, owner and insurer of the offending truck and averred, inter alia, that the accident was caused by rash and negligent driving of the truck; that the deceased was earning Rs.5000/- per month and was contributing Rs.3000/- per month to the claimants and was likely to earn for next 35 years and in that manner the claimants suffered pecuniary loss for Rs.12,60,000/-. Stating other claims for last rites of the deceased and property damage and loss of love, affection and services, the claimants made a total claim of Rs.15,17,500/-.

Record of the claim case shows that the proceedings were dropped against the driver non-applicant No.1; the owner of the vehicle did not file any reply; and the matter was contested only by the insurer-appellant who while refuting the

claim averments denied the factum of accident itself and also alleged that if the accident be found to have occurred, the same was caused for contributory negligence of the deceased. The insurer alleged violation of policy conditions by the insured and also put quantum of compensation into contention. The insurer sought permission to contest the matter on merits and their application under Section 170 of the Motor Vehicles Act was allowed by the Tribunal on 19.07.2002. It further appears from the record that an application for joining this claim case was made before the Tribunal by one Smt.Kailash Kanwar stating herself to be the wife of deceased Bhoor Singh and the application was contested by the claimant Ratan Singh refuting her claim of being wedded to the deceased. The said application was rejected by the Tribunal on 21.11.2001.

After framing of issues and making of order under Section 140 of the Act for payment of interim compensation, the Tribunal proceeded with trial of claim application and in evidence, the claimants examined Ratan Singh, claimant No.1 as AW-1 on 11.10.2002 and Gopal Das, alleged eye witness as AW-2 on 10.01.2003. The appellant-insurer failed to produce any evidence despite several opportunities and it was expressed before the Tribunal on 01.08.2003 that they do not wish to lead any evidence. The learned Judge of the Tribunal

thereafter heard the parties finally and made the award on 14.10.2003.

Learned Judge of the Tribunal found that the truck hit the jeep after intruding into the wrong side of the road and the accident was caused for the fault of the truck driver; that the said truck driver was working in the employment of truck owner and that there was no violation of policy conditions.

Taking up quantification of compensation, the learned Judge noticed that a certificate issued by the employer of the deceased was produced on record as Ex.11 but observed that though the deceased was said to be employed as a driver, his driving licence was not produced and estimated his income at Rs.2000/- per month. Thereafter, learned Judge observed that age of the deceased was recorded at 22 years in the post-mortem report and he would have survived for next 43 years. Learned Judge observed that Ratan Singh AW-1 admitted his age at 70 years and his wife did not appear in evidence, whose age could be taken at 60 years; and that the claimants were not likely to survive more than 15-20 years and they would have required their son's income for 20 years. Therefore, after deducting one-third for personal expenditure of the deceased from the estimated income of Rs.24,000/- per annum, the learned Judge concluded that the claimants were entitled to get Rs.3,20,000/-. Thereafter, learned Judge

provided Rs.5000/- towards funeral expenses and Rs.25,000/- for non-pecuniary loss and, therefore, considered that it was justified to award compensation to the claimants in the sum of Rs.3,50,000/-.

Learned counsel Mr. Jagdish Vyas appearing for the appellant has submitted that the award on the face of it is excessive and rather exorbitant and is not based on sound principles. Learned counsel submitted that in view of the admitted age of 70 years of claimant No.1, multiplier of more than 5 could not have been applied; and even the estimate of income of the deceased from private job without any relevant proof remains on much higher side. Learned counsel submitted that even if calculation is made at the most liberal standards, the award in this case cannot stand at Rs.3,50,000/- as made by the Tribunal. Learned counsel Mr. Ravi Bhansali and Mr. Dhanesh Saraswat appearing for the claimants, in all fairness, did not attempt to justify the quantum of compensation awarded by the Tribunal and frankly agreed that method of calculation adopted by the Tribunal cannot be said to be sound in law. However, it was contended on behalf of the claimants that they have lost their son in old age and reasonable compensation ought to be allowed keeping in view the future prospects of the deceased.

Having heard learned counsel for the parties and having examined the record and the impugned award, this Court is clearly of opinion that the award on its quantification of compensation cannot be sustained and deserves modification with substantial reduction.

Claimants in the present case stated their age respectively at 55 and 45 years in the claim application made in the year 2001, however, the claimant No.1 appeared in evidence before the Tribunal on 11.10.2002 and stated his age at 60 years in his particulars at the commencement of the statements and then, in his cross-examination admitted that he was earlier in government job and left the job nearly 40 years back and admitted correct the suggestion that he was approximately 70 years in age. The accident in question occurred on 15.11.2000 and claimant No.1 has admitted his age at about 70 years in the year 2002. It is but apparent that the age as stated in the claim application is not correct. The claimant No.2, mother of deceased, has chosen not to appear in the witness box at all nor the claimant No.1 has stated anything about her age. In the overall facts and circumstances of the case and the obvious incorrect averment taken by the claimant No.1 regarding his age in the claim application, it seems appropriate that the age of the claimants be taken in the bracket of 65 to 70 years. In this view of the matter, a

multiplier of 5 would have been applied but putting an estimation of lower age of the mother of deceased and looking to the age of the deceased at 25 years, this Court is of opinion that interest of justice will meet if in this case a multiplier of 6 is applied rather than the multiplier of 5.

So far reasonable multiplicand is concerned, again it is found that in the claim application, correct facts have not been stated inasmuch as income of the deceased has been stated at Rs.5000/- per month whereas AW-1 Ratan Singh has stated such income at Rs.3000/- per month; and Ex.11 also states the salary of the deceased at Rs.3000/- per month. In the overall facts and circumstances of the case when the deceased was 25 years of age and was said to be working as driver though no such driving licence has been produced on record, even if his income is taken at Rs.3000/- per month, having regard to the multiplier available in the case and providing for future certainties as well as uncertainties, loss of contribution for the claimants cannot be taken more than Rs.2000/- per month leading to the multiplicand of Rs.24,000/- per annum. Therefore, pecuniary loss would stand at Rs.1,44,000/- (24,000/- x 6). The method of assessment adopted by the Tribunal by applying a multiplier of 20 remains absolutely unjustified and the learned counsel for the claimants has rightly not attempted to justify the same.

Learned Judge of the Tribunal has provided Rs.25,000/- towards non-pecuniary loss. Having regard to the circumstances of the case, this Court is of opinion that Rs.10,000/- could be permitted to each of the claimants for loss of services of their son and non-pecuniary loss should stand at Rs.20,000/-. Funeral expenses allowed at Rs.5000/- could be retained and in the circumstances of the case, another Rs.1000/- could be provided towards costs of litigation making the award in the round figure of Rs.1,70,000/- (Rs.1,44,000/- + Rs.20,000/- + Rs.5,000/- + Rs.1,000/-). This Court is clearly of opinion that even at the most liberal standards, the award in the present case cannot stand beyond Rs.1,70,000/- and the Tribunal has been wholly unjustified in stating the award at Rs.3,50,000/-, more than double the figure of just compensation. The impugned award calls for substantial downward revision.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award dated 14.10.2003 is modified and in place of compensation amount of Rs.3,50,000/-, the award is stated at Rs.1,70,000/- with interest at the rate of 6% per annum as allowed by the Tribunal. It has been pointed out during the course of arguments that the appellant-insurer has already deposited Rs.1,75,000/- comprising of Rs.50,000/- deposited under No

Fault Liability, Rs.25,000/- while filing this appeal and Rs.1,00,000/- in pursuance of the order passed by this Court on 29.01.2004. In view of the interest allowed by the Tribunal and retained by this Court, remaining amount that would be payable by the appellant be deposited with the Tribunal within 30 days from today and the Tribunal shall make payment cash of such deposited amount to the claimants. No further order regarding costs.

(DINESH MAHESHWARI), J.

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